IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 19 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GIRISHBHAI ISHWARBHAI PATEL - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
Mr.L.R.Pujari, A.P.P. For opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 11/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order of conviction and sentence dated 22nd October, 1993 passed by

the learned Special Judge, City Civil & Sessions Court, Ahmedabad, in Special Case no. 9 of 1991 whereby the appellant-accused Girishbhai Ishwarbhai Patel was sentenced to undergo simple imprisonment for one year and to pay fine of Rs.1000/- , in default, simple imprisonment for three months for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (“the Act” for short). He was also sentenced to undergo simple imprisonment for two years and fine of Rs.1000/-, in default, simple imprisonment for three months for the offence under Section 13(1)(d) (i) (ii) punishable under Section 13(2) of the Act. Both the substantive sentences were ordered to run concurrently.

2. The facts giving rise to the present appeal as emerging from the record of the case can be summarized as under:

2.1 The complainant -Nandkishore Natvarlal Shukla who is residing at 18, Madhuvan Park Society, Ghodasar, Ahmedabad, had lodged a complaint before the P.I., Anti Corruption Bureau at Ahmedabad on 27th June, 1990 alleging that he has purchased the said tenement from the contractor of the society five years back; that the said society has 49 other tenements and majority of the members have occupied the same; that since the members of the society have not got water connection from the Municipal Corporation,

Ahmedabad, they have applied individually to the Municipal Corporation for the same. Accordingly, the complainant also made an application for water connection on 16th January, 1990 to the Municipal Corporation and he received reply from the Corporation on 23rd January, 1990 informing him that after laying the pipelines as per the rules of Municipal Corporation only the members of the society will get water connection. In pursuance of the said reply, the present complainant and other twenty six members got the pipelines laid at their own cost, and then, the complainant visited the Assistant Engineer G.I. Patel of Municipal Corporation, Ahmedabad, frequently and requested for providing water connection, however, Mr. G.I. Patel told the complainant that Madhuvan Park Society has been constructed without No Objection Certificate and N.A. permission and so as per the rules of the Municipal Corporation each member has to pay Rs.600/-towards penalty and Rs.60/- towards water connection charges i.e. Rs.660/-. Mr. G.I. Patel further added that apart from the said amount of Rs.660/-,each member has also to pay Rs.150/-extra and if the complainant is agreeable to the said condition, water connection will be provided by him. The complainant, therefore, informed all the members of the society about this fact whereupon, one of the members of the society,namely,

Sureshchandra Somalal Shah told the complainant that he had already paid penalty amount Rs.600/-, but Rs.60/-towards water connection has not been paid by him and as such, Sureshbhai paid an amount of Rs.60/-towards water connection as well as the aforesaid extra amount of Rs.150/- totalling Rs.210/- to the complainant. It is further alleged by the complainant that on 27th June, 1990 at about 9.00 a.m., the appellant-accused Mr. G.I. Patel came to Isanpur Municipal Corporation Water Tank where complainant was present. At that time, the appellant-accused asked him as to what had happened in connection with the talk which they had with regard to water connection to which the complainant replied that one of the members i.e. Sureshbhai had already paid Rs.600/-towards penalty, and hence, Sureshbhai gave the remaining amount of Rs.60/-towards water connection and extra amount of Rs.150/- as discussed, but the other members have not paid any amount. Thereupon, the appellant-accused asked the complainant to meet him between 4.00 p.m. to 6.00 p.m. in the office with the said amount of Rs.210/-given by Sureshbhai as also the amount of Rs.660/-towards penalty plus water connection plus extra amount of Rs.150/- which the complainant has to pay so that he (the appellant-accused) could take necessary steps for providing water connection to

both of them. According to the complainant, as he was not willing to pay the extra amount of bribe money, he visited the ACB Office and lodged the complaint before the P.I. J.H.Solanki, ACB, Ahmedabad who recorded his complaint at 13.00 hrs. on 27th June, 1990. P.I. Solanki then called for two Panchas through PSI, Civil Supplies Department. The Panchas having shown their willingess to act as Panchas, they were introduced to the complainant. P.I. Solanki also introduced himself to the Panchas. He then, read over and explained the contents of the complaint to the Panchas. The complainant also narrated the facts of the complaint to the Panchas. The P.I. then asked the complainant to produce the bribe amount and the complainant gave an amount of Rs.1020/-. Thereafter, these currency notes were separated into two lots of Rs.720/-(legal charges) and Rs.300/-(bribe amount). The bribe amount of Rs.300/- was then smeared with anthracene powder and after following the statutory procedures for laying of the trap, a successful trap came to be laid by the P.I. ACB, Ahmedabad between 4.00 p.m. to 6.p.m. of 27th June, 1990. The appellant-accused was thus caught red handed accepting the bribe amount. The PI, ACB, Ahmedabad then commenced investigation and on completion of investigation submitted the investigation papers to the A.C.B. Directorate who in turn

forwarded the same to the competent authority for obtaining necessary sanction as the appellant-accused was a public servant. Sanction to prosecute was obtained on 20-2-1991 and charge-sheet came to be filed before the learned Special Judge. The learned Special Judge framed charge (Exh.1) against the appellant-accused on 21-3-1991 for the offence punishable under Section 7 of the Prevention of Corruption Act ,1988 and also under Section 13(1)(d)(i) and (ii) punishable under Section 13(2) of the Act. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried.

3. To prove its case against the appellant-accused the prosecution has examined – (1) PW 2 Complainant Nandkishore Natvarlal Shukla at at Exh.10, (2) PW 1 Panchwitness Arjun Nivruti Ghatke at Exh.7, (3) PW 3 Chandulal Someshwar Sharma, the sanctioning authority at Exh.16, and (4) PW 4 Jayeshkumar Hiralal Solanki, Investigating Officer at Exh.25. The prosecution has also produced documentary evidence such as complaint dated 27-6-1990 at Exh.26, the trap Panchnama Exh.8, the seizure memo Exh.9, the file relating to Madhuvan Park Society regarding water connection Exh.11 and the chit Mark B showing the amounts. After recording the evidence of

prosecution witnesses closing Purshis was filed by the prosecution and the further statement of the appellant under Section 313 of the Criminal Procedure Code came to be recorded wherein he submitted that the complainant is the General Secretary with whom he (appellant-accused) had heated exchange of words and in order to take revenge the complainant had falsely roped him in this case. He also submitted that the sanction granted by PW 3 Chandulal Someshwar Sharma to prosecute him is not legal and valid as he has no power to appoint or remove him from service. The appellant-accused has given written submissions vide Exh.28. Certain copies of certain resolutions passed by Ahmedabad Municipal Corporation produced by the learned Advocate for the accused during arguments at the trial is at Exh.29.

4. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution both oral as well as documentary, the learned Special Judge held that the prosecution has established beyond reasonable doubt that the appellant-accused did demand the bribe money of Rs.300/- from the complainant on 27th June 1990 and that the complainant paid the said amount, the appellant did accept the bribe money of Rs.300/- from the complainant, and therefore, held the appellant-accused guilty of the offence

with which he was charged and passed the judgment and order of conviction and sentence, giving rise to the present appeal.

5. I have heard the learned Counsel Mr. K.J. Shethna for the appellant-accused and learned A.P.P. Mr. Pujari for the respondent- State at length and in great details.

6. Learned Counsel Mr. K.J. Shethna after having taken me through the entire evidence on record as also the reasons assigned and conclusions reached by the learned Special Judge has raised several contentions. At the outset, I may state that since I am in complete agreement with the views expressed by the learned Special Judge, I do not deem it necessary to reiterate the evidence of all the witnesses at length, but would only discuss the materials aspects of their evidence and the documents as are necessary for the disposal of this appeal on merits.

7. Learned Counsel for the appellant-accused Mr. Shethna, firstly contended that there are major contradictions between the evidence of the complainant and the Panch witness and that the trial Court has ignored the same. According the learned Counsel the material witnesses, namely, Sureshbhai, on whose behalf also Rs.150/-were paid as bribe money and Nanubhai Mahajan whose statement was also recorded by the

Investigating Officer have not been examined, and as such, adverse inference is required to be drawn against the prosecution and the appellant-accused is entitled to be benefit of doubt. Mr.Shethna next argued that first in point of time, when the complainant met the appellant-accused near the water-tank of the Municipal Corporation, the complainant told the appellant-accused that the amount towards bribe money has already been arranged, in spite of that the appellant-accused had not accepted the said amount at that time and place, but asked the complainant to come to the office with the amounts. According to the learned Counsel this version of the prosecution is quite improbable and unnatural which creates doubt on the whole story of the prosecution, however, the learned Special Judge having not considered this aspect has failed to appreciate the evidence in its true perspective, and thereby, committed grave error in convicting the appellant-accused. Mr. Shethna next argued that the sanction to prosecute granted by PW 3 Someshwar Chandulal Sharma (Exh.16) who was the then Deputy Commissioner, Municipal Corporation, has no powers to grant the sanction, and as such, the sanction order being illegal and invalid no Court can take cognizance on the basis of an illegal sanction, and hence, the whole trial is vitiated. The learned Counsel finally submitted

that considering all these aspects, the learned Special Judge has committed grave error in convicting the appellant-accused and prayed that the appellant-accused be acquitted of the charges leveled against him.

8. As against that, the learned A.P.P. Mr. L.R. Pujari for the respondent-State has submitted that the prosecution has successfully established the case of demand, offer and acceptance of the illegal gratification by the appellant-accused from the complainant through the trustworthy and reliable evidence of the complainant, Panchwitness as well as the documentary evidence on record and there is no contradiction in their evidence which creates doubt with regard to the genuineness of the prosecution case. According to the learned Counsel, the prosecution has proved its case beyond reasonable doubt in respect of the charges leveled against the appellant-accused. The learned A.P.P. also submitted that the even on the point of valid sanction, the learned Special Judge has convincingly discussed the issue and arrived at a just and proper conclusion in holding that the sanction order in question is quite legal and proper. According to the learned A.P.P. , the learned Special Judge is perfectly justified in passing the judgment and order of conviction and sentence against the appellant-accused, and therefore, the appeal

deserves to be dismissed.

9. This Court would now proceed to discuss the evidence on record in light of the submissions canvassed by the learned Counsel of both sides. Reading the evidence of complainant PW 2 Nandkishore Natvarlal Shukla Exh.10, it found that he had made application for water connection to the Municipal Corporation on 16-1-1990 and in response thereto the Municipal Corporation vide its communication dated 23-1-1990 informed the complainant and the other members also who had applied for water connection that their application for water connection will be considered only if they lay the pipelines for the same as per the rules and regulations specified by the Municipal Corporation. The complainant in his testimony before the Court has further deposed that on receipt of the said reply the complainant and other such members got laid the pipelines as desired by the Municipal Corporation. Thereafter, the complainant met the appellant-accused and the appellant-accused told the complaint that each member has to pay Rs.600/-towards penalty as the society was constructed without N.O.C and N.A. permission, Rs.60/- towards water connection charges and an extra amount of Rs.150/- (illegal gratification) and only after that their case for grant of water connection will be considered.

According to the complainant, on 27th June, 1990 he went to Isanpur Water Tank where the appellant-accused used to come very often with a view to meeting the appellant-accused there and while the complainant was standing there, the appellant-accused came there and enquired of him as to the details of amounts received, in reply whereof, the complainant said that he had received Rs.60/- towards water connection charges and another Rs.150/- from Sureshbhai who had already paid the amount of Rs.600/- towards penalty. Thereupon, the appellant-accused told the complainant to see him in the office of Municipal Corporation, Gol Limda between 4.00 p.m. and 6.00 p.m. The complainant in his evidence has further stated that as he was not willing to give the extra amount as bribe money, he lodged complaint before the P.I. J.H.Solanki, ACB, Ahmedabad, who recorded his complaint at 13.00 hrs. on 27th June, 1990. P.I. Solanki then called for two Panchas through PSI, Civil Supplies Department. The Panchas having shown their willingess to act as Panchas, they were introduced to the complainant. P.I. Solanki also introduced himself to the Panchas. He then, read over and explained the contents of the complaint to the Panchas. The complainant also narrated the facts of the complaint to the Panchas. The P.I. then asked the complainant to produce the

bribe amount and the complainant gave an amount of Rs.1020/-. Thereafter, these currency notes were separated into two lots of Rs.720/-(legal charges) and Rs.300/-(bribe amount). The amount of Rs.720/- consisted of seven currency notes in the denomination of Rs.100/- and one currency note in the denomination of Rs.20/- , while the amount of Rs.300/- consisted of three currency notes in the denomination of Rs.100/-. The number of these notes were noted down in the Panchnama. The amount of Rs.720/- were then put in the left side pocket of the pant of the complainant. The PI, ACB, then showed the currency notes of Rs.300/- that were to be given as bribe money in ordinary light as well as under ultraviolet lamp, but nothing significant appeared. The Panchas were then given to understand the use of anthracene powder on the currency notes in a trap and demonstration was also held. The currency notes when smeared with anthracene powder and seen under ordinary light nothing significant was visible, but when these currency notes were viewed under ultraviolet lamp visible marks of light blue shining colour appeared. These tainted currency notes of Rs.300/- were then put into the right pocket of the pant of the complainant and was instructed not to touch the same till the demand is made by the appellant-accused. Similar experiment was conducted on

the hands of the PI who conducted the experiment of anthracene powder on the currency notes by applying anthracene powder and presence of anthracene powder was noticed. The excess anthracene powder were put back in the bottle and the blank paper and piece of cloth used during the experiment were destroyed burning. Thereafter, the hands of all concerned were washed and it was ensured by carrying out experiment that no trace of anthracene powder was left out in the hands of any of the members of the raiding party. Then PSI Solanki instructed Panch no.1 to remain with the complainant and hear and see the conversation that took place between the complainant and the appellant-accused. Necessary instructions were also given by PI Solanki to Panch no.2 and the other members of the raiding party. The first part of the Panchnama was accordingly drawn. Thereafter, the complainant, Panch no.1 and one member of the raiding party went by rickshaw owned by the complainant while PI Solanki, Panch no.2 and other members of the raiding party travelled by jeep and at about 4.00 p.m. all of them reached near Jalaga Mandir situated on the road between Victoria Garden and Astodia. The complainant and Panch no.1 went to the office of the appellant-accused which is situated on the third floor of the Municipal Coporation, Kotla Office, Astodia, Ahmedabad.

On seeing Panch no.1 along with the complainant, the appellant accused pointing towards Panch no.1 enquired of the complainant as to who was the other person who accompanied him to which the complainant replied that it was Sureshbhai a resident of the society and Panch no.1 also posed himself as Sureshbhai. Thereupon, the appellant-accused asked for the receipt in respect of payment of penalty and water connection charges and Panch no.1 replied that he had forgotten to take the same from home. Then appellant-accused then verified the files and confirmed that the amount of penalty has already been paid by Sureshbhai. The complainant in his evidence has further stated that the appellant accused then demanded for the legal charges for water connection and the complainant handed over the amount of Rs.720/-to the appellant-accused which the appellant-accused counted and handed over a blank paper to the complainant for making note of the account of moneys. On this paper, the complainant first wrote his name, then details of payment to be made by him i.e. Rs.600/-plus Rs.60/- for water connection plus Rs.150/- and then name of Sureshbhai and details of payment to be made by him i.e. Rs.60/- plus Rs.150/-, in all Rs.1020/-and gave it to the appellant-accused which he placed along with the Rs.720/- already handed over

to him. The said chit is produced as Muddammal article no.4 Mark “B”. The complainant has further stated that appellant-accused then demanded another Rs.300/- and he (complainant) took out the tainted currency notes of Rs.300/- from the right pocket of his pant by using his right hand and handed it over to the appellant-accused who accepted the same and put it into the left pocket of his bush-shirt along with the amount of Rs.720/- and the chit given by the complainant produced on record as Muddamal Article no.4 Mark “B”. Soon thereafter, signal as pre-fixed was given. Thereupon, all the members of the raiding party including PI Solanki, ACB, Ahmedabad came there and PI Mr. Solanki after necessary introduction of all the members of the raiding party and Panchas to the appellant-accused, recovered the currency notes of Rs.1020/- and a chit from the left pocket of the bush-shirt worn by the appellant-accused. The numbers of these currency notes when tallied with the numbers mentioned in the first part of the Panchnama were found to be the same. Thereafter, the hands of all the members of the raiding party except the complainant and the appellant-accused were viewed under ultraviolet lamp and nothing significant was noticed. These currency notes when viewed under ordinary light nothing significant appeared, but when viewed under

ultraviolet lamp marks of anthracene powder were visible. Similar experiment was carried out on the chit, hands and on the left pocket of the bush-shirt worn-accused by Mr.G.I.Patel the appellant-accused, and when viewed under ultraviolet lamp marks of light blue shining colour of anthracene powder were found. The seizure memos are at Exhs.9. Thus, the second part of the Panchnama was completed. It is important to note here that Panch no.1 Arjun N. Ghatke in his testimony before Court at Exh.7 has deposed almost the similar version as deposed to by the complainant at Exh.10 and supports the case of complainant in the material aspects of demand, offer, acceptance and recovery. Moreover, the Panchnama Exh.8 also supports the version given by the complainant and Panch no.1. Panch no.1 in his evidence has categorically stated that on the day of the trap when he and the complainant reached the office of the appellant-accused, the appellant pointing towards him questioned the complainant as to his presence and that this witness himself posed as Sureshbhai neighbour of the complainant residing in the same society. Thereupon, the appellant-accused enquired with regard to payment of penalty and this Panchwitness replied that he had already paid the same, but had forgotten the receipt at home. The appellant-accused then verified the files and confirmed the

payment of Rs.600/-by Sureshbhai. According to this witness, the appellant-accused then enquired of the complainant with regard to the water connection charges and gave one blank paper to the complainant on which the complainant had noted down his name, then the details of payment to be made by him i.e. Rs.600/-plus Rs.60/- plus Rs.150/-totalling Rs.810/-. Below this total, the complainant then wrote the name of Sureshbhai and against his name, the details of payment to be made by him i.e. Rs.60/- plus Rs.150/- totalling Rs.210/-, and thereafter, the grand total was made of Rs.1020/-and handed over the said chit (Muddammal article no.4 Mark “B”) to the appellant-accused. The appellant-accused then asked the complainant whether he had brought the other amount, over and above the legal charges of Rs.720/- to which the complainant replied that as per the talk that took place between him(complainant) and appellant-accused, he had brought Rs.720/- towards legal charges and another amount of Rs.150/- on his behalf (complainant's) and further amount of Rs.150/- on behalf of Sureshbhai totalling Rs.300/-. According to Panch no.1, the appellant-accused told the complainant, “Good” and asked the complainant to handover the amount to him (appellant-accused). Thereupon, the complainant at first handed over the amount of Rs.720/-which was counted by the appellant

accused, and thereafter, the amount of Rs.300/- was also handed over to the appellant-accused towards illegal gratification which was accepted by the appellant-accused in presence of this witness- Panch no.1 and after counting the same with both the hands, kept this amount along with the earlier amount of Rs.720/-, took the said chit with regard to accounts from the complainant and put both these amounts as also the chit into the left side pocket of his bush-shirt. Ultimately, the pre-arranged signal was given by the complainant and the appellant-accused was caught red-handed accepting the bribe and the amount including the bribe amount of Rs.300/- was recovered from the left pocket of the bush-shirt worn by the complainant. Thus, it can be seen that the evidence of the complainant and the Panch no.1 is consistent in material particulars and they have given almost similar version. The following facts emerge on analyzing their evidence- (i) The fact of initial demand has been proved through the evidence of the complainant , PW 2, Exh.10 which is supported by this complaint Exh.26. (ii) It is further supported by the conduct of the complaint in informing the police and filing complaint. The complainant also went to the appellant-accused with the bribe money and approached the appellant-accused on the trap day. (iii) The fact of initial

demand gets further support from the evidence of the complainant that on the trap day when he in the company of Panch no.1 met the appellant-accused in his office, the appellant-accused inquired of the complainant in presence of Panch no.1 as to whether he had brought the other amount over and above the legal charges. On this point even Panch no.1 has supported the evidence of the complainant. (iv) As regards the evidence of demand of bribe money on the date of the trap, there is evidence of the complainant, Panch no.1, the complaint, Panchnama and seizure memo. (v) The evidence of consequent recovery of bribe money further supports the case and evidence of pre-trap demand and trap day demand. (vi) The evidence of acceptance can be gathered from the evidence of complainant, evidence of Panch no.1,and Panchnama. (vii) The evidence of recovery of bribe money further supports the case and evidence of demand and acceptance. The recovery of bribe money is proved on record through the evidence of complainant, Panch no.1 Arjun N.Ghatke,I.O Mr. J.H.Solanki, complaint, Panchnama, presence of anthracene powder on the hands of the appellant-accused, on the currency notes recovered and on the left pocket of the bush-shirt of the appellant-accused worn by the appellant-accused, (viii) The complaint Exh.26 as also the

seizure memos Exhs. all bear testimony to the fact of initial demand as well as subsequent demand and acceptance. The complaint also reflects that the complainant was not willing to give the bribe, and as such, the complainant cannot be termed as an accomplice. (ix) The Panchnama Exh.8 is found to be authentic and reliable.Panch no.1 ArjunN. Ghatke has fully supported the prosecution version which is reflected in Panchnama Exh.8. Even in cross-examination this witness stands firm on the material part of his deposition and the lengthy cross-examination did not shake his testimony.

10. In the case on hand, it is significant to note that the complainant despite lengthy and searching cross examination has not at all been shaken on the substantive part of the evidence regarding the appellant-accused having demand and accepted the bribe amount in presence of Panch no.1 on the day of the trap at the office of the appellant-accused. Apart from this, the authenticity of the complaint Exh.26 stands established from the deposition of Panch no.1 Exh.7 wherein he has in clear terms deposed that the complaint (Exh.26) was read over and explained to him and that the complainant has also narrated the facts of the complaint being correct. The first part of the Panchnama also reflects this fact. In the present case, the evidence of the complainant and Panch no.1

is consistent, the complaint Exh.26 also recites almost the similar version given by the complainant in his evidence. To some extent the evidence of I.O. Mr. Solanki also supports the version given by the complainant as well as Panch no.1. I have also given my thought to the written explanation of the appellant-accused Exh.28 as also the further statement made by the appellant-accused under Section 313 of the Criminal Procedure in his defence, however, I find that the same does not in any manner adversely affect the case of the prosecution. The appellant accused has admitted that he was working as an Asstt. Engineer on the date of trap i.e. 27th June, 1990 and the complainant along with one person came to him on that day for the deposit of amount of Rs.600/- penalty and amount towards water connection. According to the appellant, he then verified the file of Madhuvan Park Society regarding water connection and he found that nothing was done in connection with the form for water connection submitted by the complainant for want of deposit of the amount. The appellant therefore instructed the complainant to deposit Rs.600/- as well as Rs.150/- to Rs.200/- for the expenses of individual water connection in the Accounts Branch, and thereafter, to approach him. Thereupon, the complainant who was a political worker and General Secretary of BJP he felt

irritated and lost his temper whereupon the appellant-accused tried to calm him down and explained to him with regard to the amount to be deposited. The appellant- accused in his written submission has also stated that the complainant also sought for the water connection in respect of Sureshbhai whereupon the appellant-accused verified the file and told the complainant that Sureshbhai had already paid Rs.600/- and that the expenses for water connection has to be deposited. The complainant then insisted the appellant accused to accept the amount but the Accounts were closed after office hours and so the appellant-accused instructed the complainant to deposit the amount on the next day. According to the appellant-accused , the complainant still kept on insisting the appellant-accused to accept the amount and also insisted for providing the water connection immediately. Thereupon, the appellant-accused explained to the complainant that he was unable to receive the amount as he had no power to accept the same, still however, the complainant forcibly handed over a chit in which the moneys were kept but the appellant-accused refused to accept it with both hands and he returned the chit with the moneys to the complainant after which he immediately got up for his chair and went to the cabin of Deputy City Engineer M.N.Shah. The appellant has further

stated that immediately thereafter, the ACB Inspector and other persons came in the cabin of N.M.Shah. The appellant-accused has, however, later denied regarding the previous incident which took place on 27th June, 1990 as according to him, on that day he was in round with another City Engineer Shri Ishwarbhai Patel. Such an explanation tendered by the appellant accused in defence is difficult to swallow as the appellant-accused as not even informed his immediate Superior Officer with regard to this fact which should be the natural conduct of the appellant-accused. There is also no evidence to show that there is enmity between Panch no.1 and the appellant-accused or between PW 4 Investigating Officer and the appellant-accused so as to falsely implicate the appellant-accused; or that complainant and the appellant-accused were in inimical terms.

11. Thus, having critically examined the aspects as aforesaid, I have no hesitation in holding that the prosecution has satisfactorily proved through cogent and convincing evidence that the appellant-accused demanded illegal gratification on 27th June, 1990; that the unwilling complainant did pay the same to the appellant accused for getting essential supply of water, that the appellant-accused did accept the same from the complainant and the said bribe

money was recovered from the left side pocket of the bush-shirt of the appellant-accused. Therefore, when the facts of demand, offer, acceptance and recovery have been established beyond reasonable doubt, the prosecution has to be held to have proved that the appellant-accused received the moneys in question as an illegal gratification that was not his legal remuneration and which he was otherwise not entitled to receive as a motive or reward for doing an official act of granting water connection. It is well settled proposition of law that when the amount is found to have been passed to a public servant, the burden is on the public servant to establish that it is not by way of illegal gratification which appellant has failed to do. (See (2000) 9 SCC 752).

12. I now proceed to answer the question posed regarding contradictions in the evidence of complainant and Panchwitness as also the manner in which the bribe money was given to the appellant-accused by the complainant. There are various factors on account of which contradictions creep in the evidence of witnesses. When the witnesses are deposing before the Court after a lapse of three years, it is quite natural and probable that minor contradictions here or there are bound to occur. In the present case, these contradictions do not touch the root of the case and are not material

contradictions. Moreover, these contradictions do not adversely affect the natural course of events as also the consistent evidence of complainant and Panch no.1 which is fully corroborated and supported by Panchnama Exh.8 on the aspects of demand and acceptance or even the Muddamal article no.4 Mark “B” the chit showing the accounts of moneys.

13. So far as the contention that the appellant-accused could have accepted the amount at the first point of time when the appellant-accused met the complainant at Isanpur water tank is concerned, it does not merit acceptance as it would depend upon the situation at that place at that time, like presence of outsiders etc. It is also equally possible that the appellant accused wanted to receive the bribe amount in privacy at his office. If the appellant-accused had thought it proper to call the complainant at his office for demanding the amount of bribe, he should thank himself.

14. There is also no force in the submission that material witnesses like Sureshbhai and Nanubhai Mahajan have not been examined by the prosecution as even if these witness would have been examined they could not have thrown any light so as to discard the prosecution evidence. Moreover, there are sufficient written and documentary evidence in

support of the prosecution case together with the consistent, reliable and trustworthy depositions of complainant, Panch no.1 and Investigating Officer M. Solanki.

15. Turning now to the question of legality and validity of the sanction order, it is necessary to refer to the Old Act, namely the Bombay Provincial Municipalities Act, 1997 which confers power on the members General Body to appoint an employee, but thereafter the Act came to be amended. As per the amended Act if the basic pay of an employee is Rs.425-700, then the power lies with the officer to whom the Government entrusted the power by a public Notification. PW 3 Chandulal Someshwar Sharma in his evidence at Exh. 16 has stated that vide Office Order dated 29th September, 1987 which is produced at Exh.21 power of appointment of an employee vested with the Municipal Commissioner who by exercising powers under Section 49(1) of the Bombay Provincial Municipal Corporation Act entrusted certain powers to the Deputy Commissioner by its Office Order no.3035 dated 8th May, 1990 which is produced at Exh.22. As per the evidence of PW 3 he had power to appoint the appellant-accused at the relevant time whose pay scale was Rs.425-700 as he was the Deputy Commissioner at that time conferred with such powers by the Municipal Commissioner under the provisions of the

BPMC Act. This witness has further stated that he had verified all the papers, and thereafter, thought it fit to accord sanction. It is an admitted fact that the alleged offence is of 27th June, 1990. This witness PW 3 has produced on record the Resolution Exh.23 of the Municipal Corporation which shows that the power to appoint and remove the appellant-accused remained with him at the time of the alleged offence. This witness has also categorically stated in his evidence that initially the appellant-accused was appointed in the year 1977-78 as a Section Officer which post was thereafter re-designated as Asstt. Engineer in the same cadre. It was only in January 1991 that the pay scale of Asstt. Engineer was Rs.1640-2900, and thereafter, its initial minimum was raised from Rs.1640/- to Rs.2000.

16. Keeping in mind the clear statutory position as laid down in Section 19(2) of the PC Act, I am fully convinced that the power to appoint and remove the present appellant-accused was vested with PW 3 who was the Deputy Commissioner at the time of the alleged offence, and therefore, the sanction to prosecute the present-appellant accused accorded by him to the appellant who is admittedly a public servant is quite legal and valid. Even the contention of the learned Counsel for the appellant-accused that in June, 1990 the pay scale of the

appellant-accused Rs.2600/-and hence, PW 3 could not have had powers to accord the sanction as per the amended Act cannot be accepted as it is raised for the first time before this Court in appeal. The appellant-accused had ample opportunity to raise this contention by producing the necessary documents like pay slip etc. before the learned Special Judge which he had not done, and now he cannot be permitted to wake up from his slumber and say that as his pay scale was more than Rs.2000/- in June, 1990, the PW 3 has no power to accord the sanction to prosecute him. Section 19 (3)(a) of the Prevention of Corruption Act reads as under:

"Section 19(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby."

15.1 From a plain reading of this Section, it is crystal clear that in appeal, the appellate Court shall not reverse or alter any finding, sentence or order passed by the Special Judge on the ground of any error or omission or irregularity in the sanction order is found. No doubt, if prima facie in the opinion of this Court, it is found that failure of justice has in fact

occurred , then, the appellate Court can interfere. In the present case, the appellant-accused has neither raised this contention before the Special Judge nor produced any document in support to show that his pay scale was more than Rs.2000/-at the relevant time. As can be seen from the section itself, the evidence of pay-slip as pointed out by the learned Counsel for the appellant-accused cannot be looked into at this stage by the High Court in appeal as no failure of justice has occasioned. Even assuming that the pay scale of the appellant-accused was Rs.2000/- at the relevant time it makes no difference as it is not established by the appellant-accused as to who is the competent/appropriate authority who could accord sanction to the appellant-authority. (See M.W. Mohiuddin v. State of Maharashtra reported in (1995) 3 SCC 567 Para 8).

16. To substantiate his arguments, the learned Counsel for the appellant-accused has also cited the following authorities – (1) State Inspector of Police, Vishakapatanam v. Surya Sankaram Karri reported in (2006) 7 SCC 172, (2) P.A. Mohandas v. State of Kerala reported in (2003) 9 SCC 504, (3) K.Devassia v. State of Kerala reported in (2006) 10 SCC 447 and (4)State of Karnataka through CBI v. C.Nagarajaswamy reported in (2005) 8 SCC 370. However, on a careful study of

these decisions, I find that there is no dispute to the proposition of law laid down in these decisions, however, the facts of the case in these decisions relied upon by the learned Counsel for the appellant being totally different from the facts of the case on hand, the ratio of these decisions would not apply to the facts of the present case.

17. On overall appreciation of the evidence, this Court finds that the total effect of the entire evidence led before the Court is of a nature by which the only conclusion possible was that the appellant-accused accepted the bribe amount. I have also cross-checked the reasonings assigned by the learned Special Judge with the evidence on record and am satisfied that the reasoning and the findings recorded by the learned Special Judge are consistent with the material on record. Consequently, I am constrained to hold that the prosecution has established the case beyond reasonable doubt against the appellant-accused in respect of the charges levelled against him. I am fortified in my view by the decision rendered by the Honourable Supreme Court in the case of (1) State of Madhya Pradesh v. Shambhu Dyal Nagar reported in 2006 AIR SCW 5737 and (2) Jayantilal Kuberdas Sharma v. Stateof Gujarat reported in 2007 (1) G.L.R. 99.

20. In the result, the appeals fails and is dismissed. The

judgment and order of conviction and sentence dated 22nd October, 1993 passed by the learned Special Judge, City Civil and Sessions Court, Ahmedabad, in Sessions Case no.9 of 1991 is hereby confirmed. The bail bond of the appellant-accused-Girishbhai Ishwarbhai Patel stands cancelled. The appellant-accused is given time for eight weeks for surrendering before the trial Court and for filing proceedings before the higher forum.

(M.D.Shah,J.)

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